

OP-21-12, "Prevention, Detection, and Response to Sexual Abuse/Sexual Harassment," October 29, 2014

## SCDC POLICY/PROCEDURE

NUMBER:OP-21.12

TITLE:PREVENTION, DETECTION, AND RESPONSE TO SEXUAL ABUSE/SEXUAL HARASSMENT

ISSUE DATE: October 29, 2014

RESPONSIBLE AUTHORITY:DIVISION OF OPERATIONS

OPERATIONS MANUAL:OPERATIONS

SUPERSEDES: OP-21.12 (August 1, 2011) (September 1, 2007)

RELEVANT SCDC FORMS/SUPPLIES: 18-78(New Form); 19-10; 19-29

ACA/CAC STANDARDS: 4-4281-1 through 4-4281-8 STATE/FEDERAL STATUTES:Prison Rape Elimination Act of 2003 (PREA, P.L. 108-79); Section 44-23-1150, South Carolina Code of Laws, 1976, as amended.

PURPOSE: To provide guidelines to address the requirements of the Agency pursuant to the Prison Rape Elimination Act.

POLICY STATEMENT: Pursuant to the Prison Rape Elimination Act (PREA), the South Carolina Department of Corrections (SCDC) has a zero-tolerance policy regarding sexual abuse and sexual harassment against inmates in correctional facilities, or patients confined in prisons or jails. The SCDC will identify and monitor those inmates who are vulnerable to sexual abuse and those who have a propensity to commit such acts and ensure that they are separated from each other. All persons who have contact with inmates will receive training on Agency sexual abuse and sexual harassment policies, including reporting procedures, the dynamics of sexual abuse in confinement, and how to detect and respond to signs of abuse. All inmates will receive orientation on their rights to be free from sexual abuse and sexual harassment and will be made aware of the procedures available to them for reporting acts of sexual abuse. The Agency will fully investigate all allegations and will take appropriate action pursuant to the outcome of the investigations.

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### SPECIFIC PROCEDURES:

#### 1. INMATE ORIENTATION, SCREENING AND ASSESSMENT: (4-4281-2)

1.1 As a part of the initial intake process at the Reception and Evaluation (R&E) Center, all inmates will receive a thorough orientation on the Agency's zero-tolerance policy regarding the sexual abuse of inmates. The information will be provided in two stages: 1) intake education, which will be provided during the intake process (within 24 hours of the inmate's arrival) and will include an explanation of SCDC's zero-tolerance policy toward sexual abuse and sexual harassment, and how to report incidents or suspicions of sexual abuse or sexual harassment; and 2) comprehensive education which will be provided within two weeks of the inmate's arrival at R&E and will include, but is not limited to:

- SCDC Policy OP-21.12, "Prevention, Detection, and Response to Sexual Abuse/Sexual Harassment;
- Inmates' right to be free from sexual abuse and sexual harassment as well as retaliation for reporting such incidents;
- Prevention;
- Tips for staying safe;

- How to report incidents or suspicions of sexual abuse or sexual harassment;
- SCDC's policies and procedures for responding to sexual abuse and sexual harassment, including the availability of treatment and counseling for victimized inmates; and
- Disciplinary actions for intentionally making a false allegation.

1.1.1 The inmate education sessions will be facilitated by a staff member who is knowledgeable about the Agency's current policies and procedures addressing the sexual abuse of inmates and who has been trained on how to discuss sexual abuse and related sensitive topics with inmates.

1.1.2 The information will be communicated in a manner that is clearly understood by the inmate; inmates will have the opportunity to ask questions during these presentations. Offenders will be required to sign an acknowledgement of having received this information at both the intake and comprehensive education sessions initial intake process and at all institutional orientations on SCDC Form 18-78, "Certification of Prison Rape Elimination Act (PREA) Orientation." A copy of the 18-78s will be maintained in the inmate's institutional record. (4-4281-1)

1.1.3 Inmate orientation and orientation materials will be provided in formats which are accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills. (4-4281-1)

1.1.4 Inmates shall receive a brief refresher version of the information provided during comprehensive education sessions described in section 1.1 during all institutional orientations subsequent to that at the R&E Center (except 30-day program inmates at Watkins and Goodman). These sessions shall focus on educating inmates about relevant procedures to the extent that those of the inmate's new facility differ from those of the previous facility.

1.1.5 Current inmates who have not received the required education shall be educated as promptly as possible.

1.1.6 In addition to the education outlined above, each SCDC facility will ensure that key information, including information about the right to be free from sexual abuse and sexual harassment, and how to make a report, is continuously and readily available or visible to inmates through posters and other written formats.

**2. STAFF TRAINING AND ORIENTATION:** PREA training will be provided to all Agency staff, contractors, temporary/grant employees, and volunteers during the individual orientation programs as well as during mandatory in-service annual training. The training will include, but is not limited to:

- Review of this policy, and other SCDC policy provisions pertaining to inmate sexual abuse and sexual harassment prevention, detection, reporting and response, and how staff are to fulfill their responsibilities under these policies and procedures;

- The requirement that staff report immediately any knowledge or information regarding sexual abuse or sexual harassment;
- Zero tolerance for the sexual abuse or sexual harassment of inmates; (4-4281-6)
- Inmates' right to be free from sexual abuse and sexual harassment, and the right of inmates and staff to be free from retaliation for reporting such abuse;
- The dynamics of sexual abuse and sexual harassment in confinement, recognition of signs of threatened and actual sexual abuse, common reactions of sexual abuse victims and sensitivity to inmate reports of sexual abuse, confidentiality, recognition of signs of predatory inmates and inmates who are vulnerable to sexual abuse;
- How to avoid inappropriate relationships with inmates; and
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

2.1 Specialized Training may be provided for staff members who are likely first responders to incidents of sexual abuse or who will be charged with specific aspects of the Agency response to abuse allegations. This training may include, but is not limited to: crime scene management, elimination of contamination, evidence collection protocol, and crisis intervention.

### 3.REPORTING PROCEDURES:

#### 3.1Inmate Reporting Procedures:

3.1.1 Inmates incarcerated in an SCDC facility may report any act of sexual abuse by calling \*22, and/or by written or verbal reports to any Agency staff member, contract employee, volunteer, or the Division of Investigations, or SLED (address). The inmate can file a written report without giving his/her name or the name of the abuser(s). This information could also include an assault that occurred at any Correctional Facility, Detention Center, County Facility or while under community supervision, prior to or during his/her commitment to the SCDC. (4-4281-7)

3.1.2 A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred does not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. Any inmate conclusively found to have filed an intentional

ly false report alleging sexual abuse will be subject to disciplinary action through the Inmate Disciplinary System and/or criminal charges.

3.2 Staff Reporting Procedures: Any employee, volunteer, agent, or contractor of the Agency who observes or receives information concerning sexual abuse, including threats of sexual abuse or a substantial risk of imminent sexual abuse, toward an inmate and/or any person presently under the jurisdiction of the Agency, must report it immediately to one of the following: Institutional Investigator, Warden of the institution, appropriate member of the Director's staff, Division Director of Human Resources, or the Inspector General. Visitors, volunteers, agents or contractors who fail to report any knowledge of sexual abuse towards an inmate may lose their privileges with the Agency, and may possibly face criminal charges.

3.2.1 SCDC staff failure to report such information will result in corrective action up to, and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action." See SCDC Policy/Procedure ADM-11.17, "Employee Conduct," for additional information.

3.2.2 Any employee, (to include contract and temporary) who knowingly or intentionally submits inaccurate or untruthful information concerning sexual abuse as defined by state statute is guilty of the misdemeanor of falsely reporting sexual abuse and, upon conviction, must be imprisoned for not more than one (1) year. In addition, such conduct will result in corrective action up to and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action."

3.2.3 A person who has knowledge of, or has received information of, sexual abuse and fails to report it to the appropriate law enforcement authority, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500.00 or imprisoned for not more than six (6) months, or both.

4. RETALIATION: No inmate will be subjected to retaliation, reprisal, harassment, or disciplinary action by employees, volunteers, or other inmates for reporting allegations or knowledge of sexual abuse against an inmate. Inmates may report retaliation using any of the procedures for reporting sexual abuse, as described in Section 3.1. Allegations of reprisal may also be investigated by the Inspector General or Division of Investigations.

4.1 Employees will not be subjected to any kind of retaliation for reporting of any wrongdoings. Refer to Agency Policy/Procedure ADM-11.15, "South Carolina Whistleblower Act" for more information.

5. STAFF INTERVENTION: If there is an instance of suspected or actual sexual abuse/victimization the security staff first responder(s) must take the following initial steps:

- Identify and separate perpetrator and victim (4-4406);
- Immediately take the victim to Medical;
- Escort alleged inmate perpetrator(s) to an isolated area, preferably in a dry cell with restricted access to a toilet or water;

- Notify Shift Supervisor, PREA Compliance Manager, Warden, as well as Investigations;
- Isolate any witnesses;
- Secure the crime scene;
- Document all incidents promptly on SCDC Form 19-29, "Incident Report"; and
- Only share information related to the incident with those people who need to know in order to ensure the victim's safety, conduct the investigation, or provide treatment to the victim or alleged perpetrator.

## 6. INVESTIGATIONS OF SEXUAL ABUSE AND SEXUAL HARASSMENT:

6.1 All allegations of sexual abuse and sexual harassment, including threats and attempts, will be immediately and aggressively investigated. The Division of Investigations shall initiate the investigation, will notify South Carolina Law Enforcement Division (SLED) and the Inspector General's office when sexual misconduct by staff, contractors or volunteers is alleged, and will conduct an internal investigation in accordance with SCDC Policy/Procedure GA-05.01, "Investigations."

6.2 Collection of forensic and other physical evidence will be done in coordination with the facility's medical staff, the Division of Investigations and/or the South Carolina Law Enforcement Division.

6.3 If allegations of conduct that appears to be criminal are substantiated, referral will be made to the appropriate solicitor for prosecution. Additionally, staff will be subject to Agency corrective action up to and including termination, and inmates may be charged through the Agency Disciplinary System.

6.4 For further procedures in response to allegations of sexual abuse, see the Sexual Abuse Response Protocol.

6.5 Evidence/Security Procedures: If there is evidence that a sexual assault has occurred, the area will be treated as a possible crime scene and the following steps will be implemented immediately upon discovery:

- Identify and maintain the crime scene, preserve evidence, including on the victim's and alleged perpetrator's bodies or clothes, and maintain custody of evidence until released to law enforcement officials;
- Items shall not be cleaned or removed;
- Photos shall be taken of the suspected crime scene and any evidence;
- Allow only authorized personnel to enter the area; and
- If the incident occurred within the last 5 days, request that the victim - and ensure that the alleged perpetrator(s) - refrain from actions that could destroy evidence, such as bathing, brushing teeth, changing their clothes, urinating, defecating, drinking, or eating until they have been examined by qualified medical

personnel.

- Ensure that any alleged staff, volunteer or contractor perpetrators are immediately separated from contact with inmates.
- For additional procedures, see the Sexual Abuse Response Protocol.

## 7. TREATMENT FOR VICTIMS:

7.1 All alleged inmate victims will be taken to the Medical Services Area for an initial medical assessment. If medical personnel determine that a sexual assault may have occurred, the inmate will be taken to an outside medical facility. The outside medical facility will perform a medical forensic exam, as appropriate, collecting all evidence and maintaining the chain of custody to preserve the evidence. (4-4406)

7.2 Victim Support: An individual treatment plan shall be developed and initiated for each victim of sexual abuse to address post traumatic stress resulting from the sexual abuse. The treatment plan shall include, at a minimum, mental health counseling, medical follow up (i.e., baseline testing for infectious diseases, etc.). In the case of female inmates, a pregnancy test as appropriate will be completed. (4-4406)

7.3 Victims of sexual abuse shall be kept separate from their perpetrators by means of a separation profile in accordance with SCDC Policy/Procedure OP-21.04, "Inmate Classification Plan."

## 8. PERPETRATOR TREATMENT PLAN:

8.1 An individual treatment plan shall be developed and initiated for each sexual perpetrator in order to decrease the individual's potential for continued sexual abuse within the correctional environment and after release to the community. The treatment plan shall include, at a minimum, a sex offender assessment and possible participation in sex offender programming.

8.2 For further procedures in response to allegations of sexual abuse, see the Sexual Abuse Response Protocol.

## 9. DATA COLLECTION/TRACKING:

9.1 Case Records: All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings and recommendations for post-release treatment and/or counseling are retained in accordance with OP-21.07, "Inmate Records" and HS-18.07 "Inmate Health Information".(4-4281-8)

9.2 The PREA Coordinator will be responsible for compiling records and reporting statistical data to the Federal Bureau of Justice as required by PREA of 2003.

## 10. DEFINITIONS:

Sexual abuse includes--

(1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening, however, slight, by a hand, finger, object, or other instrument, that is unrelated to the official duties or where the staff member, contractor or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;



7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
8. Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment includes--

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Consensual sexual contact among inmates is prohibited, and will be referred through the Inmate Disciplinary System. However, non-coercive sexual activity between inmates does not constitute sexual abuse and the Agency may not deem it as such. It is thus beyond the scope of this policy.

SIGNATURE ON FILE

—

s/Bryan P. Stirling, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

Attachment A

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

CERTIFICATION OF PRISON RAPE ELIMINATION ACT (PREA) ORIENTATION

This is to certify that I , \_\_\_\_\_, SCDC# \_\_\_\_\_,

have seen the PREA video at \_\_\_\_\_

(Assigned Institution/Division)

advising me of the Agency's policies and procedures regarding sexual abuse against inmates in correctional facilities, or patients confined in prisons or jails.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
INMATE'S SIGNATURE

\_\_\_\_\_  
SCDC#

\_\_\_\_\_  
CERTIFYING OFFICIAL'S SIGNATURE

Institutional Record  
SCDC FORM 18-78 (Created January 2011)